



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

November 15, 2022

Via ECF

The Honorable Ronnie Abrams
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *The New York Times Company v. U.S. Dep't of Health and Human Services*,
No. 22 Civ.9070 (RA) (S.D.N.Y.)

Dear Judge Abrams:

This Office represents the U.S. Department of Health and Human Services ("HHS") in the above-referenced case brought by plaintiff The New York Times Company pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I write respectfully on behalf of both parties pursuant to the Court's order dated November 1, 2022, Dkt. No 7.

Because this is an action brought pursuant to FOIA, which in essence seeks review of agency action, the parties respectfully submit that pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(i) and 26(f), this action is exempt from initial disclosures and the 26(f) conference and report. In addition, the parties understand that pursuant to Local Civil Rule 16.1, this FOIA action is exempt from the requirement of a mandatory scheduling order under Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request to be relieved from the obligation under the Court's November 1 order to provide a case management plan in this matter, which we understand to be designed to fulfill that requirement. Moreover, the parties respectfully submit that such a scheduling order is unnecessary because the parties expect that this matter, like most FOIA matters, will be resolved either consensually by the parties or through motions for summary judgment without discovery. *See Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). Finally, the parties consent to this case being referred to Magistrate Judge Moses.

The parties submit the following information, pursuant to the Court's initial conference order:

1. **Brief statement of the case.** This is an action under FOIA, seeking the production of documents that The New York Times Company requested from the HHS in FOIA requests dated August 2, 2022, September 16, 2022, and September 30, 2022 (the "Requests"). The Requests sought documents related to the government's policies and processes for taking care of unaccompanied children who arrive in the U.S. Once HHS has completed its search for records and made any appropriate productions of responsive records, the adequacy of HHS's search for records responsive to the Requests and the propriety of FOIA withholdings will likely be the central issues in dispositive motions, if the action is not resolved consensually.

2. **Basis of subject matter jurisdiction and venue.** The New York Times Company alleges in the complaint that jurisdiction and venue are proper in this Court under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B), on the ground that The New York Times Company's principal place of business is in this district. Dkt. No. 1 ¶¶ 5-6.

3. **Motions.** There are no pending motions or applications expected to be made at this time. The parties anticipate that once production of responsive records is completed, summary judgment motions concerning HHS's response to the Requests and/or assertion of FOIA exemptions may be necessary to resolve the action, if it is not resolved consensually.

4. **Discovery.** No discovery has taken place in this matter. Because this is a FOIA case, discovery is "generally . . . unnecessary," *Carney*, 19 F.3d at 812, and the parties do not anticipate engaging in any discovery at this time.

5. **Settlement discussions.** While the parties have not yet engaged in settlement discussions, we anticipate that we will engage in discussions about the schedule for HHS to process records responsive to the Requests, about the search HHS conducts to locate records responsive to the Requests, and about the application of FOIA exemptions to any responsive records, as the case proceeds.

6. **Estimated length of trial.** The parties anticipated that this matter will be resolved through summary-judgment practice, if it is not resolved consensually.

7. **Other information.** Since the filing of this action, HHS has been working to task appropriate individuals within HHS to search for records responsive to the Requests and has further been working to carry out those searches. The parties respectfully request that the Court order a joint status report on or before December 20, 2022, in which the Government will set forth a timetable for producing documents and responses. The parties will propose a schedule for summary judgment motions, should they be necessary, at the conclusion of the production.

* * *

If the parties are unable to resolve a dispute that arises in the course of the response to the Requests, we will promptly present our respective positions to the Court for resolution. At this time, because the parties do not believe we have any issues that require the Court's attention and because HHS's time to answer will not run until November 28, 2022, we respectfully request that the November 22, 2022 status conference be adjourned. However, the parties are available to attend the conference if the Court prefers.

We thank the Court for its consideration of this matter.

Respectfully submitted,

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Southern District of New York

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